Qwest
Spirit of Service

Qwest
607 14th Street NW, Suite 950
Washington, DC 20005
Phone 202.429.3100
Fax 202.467.4268

Gary R. Lytle
Senior Vice President-Federal Relations

EX PARTE

June 7, 2005

By Hand and Electronic Filing via ECFS

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: WC Docket No. 05-65 – *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control;*
WC Docket No. 05-75 – *In the Matter of Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*

Dear Chairman Martin:

I write in response to the letters filed by SBC/AT&T [1]/ and Verizon/MCI [2]/ (together, the "Merger Parties") opposing Qwest's request that the Commission afford its staff and the public a meaningful opportunity to assess the many implications of the proposed mergers that are at issue in these proceedings.

This problem was brought to a head by the Merger Parties' recent submission of *over a million pages* of new data in the record in response to Commission information requests and in support of their respective applications. The Commission has correctly recognized that this information is crucial in order for it to meet its statutory obligation to determine whether these two mergers serve the public interest. It should go without saying that the staff needs time to review and analyze this information, and that the public similarly needs time to do the same and provide comments to the Commission.

But the situation here is even more challenging due to the failure of the Merger Parties to submit this information in a practical form and in compliance with the relevant Protective Orders. They have failed to provide reasonable indices of the data. They have provided key data in a format that effectively prevents third parties – and presumably Commission staff – from using it. They have indiscriminately applied a "copying restricted" designation to an overwhelming number of documents. These and other actions have all been taken in direct violation of the terms and spirit of the Protective Orders.

---

[1]/ Letter to Chairman Kevin Martin, FCC, from Gary L. Phillips, SBC Communications Inc., and Lawrence J. Lafaro, AT&T Corp., WC Docket No. 05-65, dated May 27, 2005 ("SBC/AT&T Letter").

[2]/ Letter to Chairman Kevin Martin, FCC, from Michael E. Glover, Verizon, and Richard S. Whitt, MCI, Inc., WC Docket No. 05-75, dated June 2, 2005 ("Verizon/MCI Letter").

The Merger Parties clearly hope that the Commission will mechanically address their mergers under its informal, 180-day merger clock, suggesting that these two deals are typical transactions. They realize that, as a practical matter, half this time already has run. They hope that to meet this assumed deadline the Commission staff will now have to start drafting a decision without seriously considering the new data it requested, let alone having the benefit of analyses by the public. [3]/

Qwest appreciates fully the Commission's interest in moving its proceedings to resolution promptly. But we also assume that the Commission will not facilitate a rush to judgment, or reward the parties for attempting to "run out the clock." Like the Department of Justice, state commissions and other bodies, we expect that the Commission will – and should – take the time it needs to carefully review these two intersecting transactions under the standards of the Communications Act.

Qwest has requested that the Commission stop its informal, 180-day merger clock in each of the above-referenced proceedings, and restart it anew only once interested parties have been given reasonable access to the new record information and a fair opportunity to comment on it. [4]/ The Commission has stopped the clock in other proceedings for a variety of reasons, including situations in which additional data was sought from merger applicants by the Commission. [5]/ We are not alone in addressing this problem. In fact, on the same day we submitted our request, a group of five other carriers also asked you to stop the clock "to ensure that the Commission . . . protect[s] the fairness and integrity of its review process as it examines the two most significant merger proposals ever to come before [it]." [6]/

---

[3]/ The Merger Parties predictably try to write off the relevance of Qwest and others as complaining competitors. SBC/AT&T Letter at 6-7; Verizon/MCI Letter at 1. The Commission, of course, knows that carriers are wholesale customers of the Merger Parties, with a direct interest in the outcome of these proceedings. The Commission also will be addressing the impact on retail consumers if SBC and Verizon eliminate their two main competitors.

[4]/ Letter to Chairman Kevin Martin, FCC, from Gary Lytle, Qwest, WC Docket Nos. 05-65 and 05-75, dated May 25, 2005.

[5]/ *See, e.g.,* Letters to Richard E. Wiley, Wiley Rein & Fielding, Gary M. Epstein, Latham & Watkins LLP, and William M. Wiltshire, Harris, Wiltshire & Grannis LLP, from W. Kenneth Ferree, FCC, MB Docket No. 03-124, dated Nov. 17, 2003, and Oct. 10, 2003, and http://www.fcc.gov/transaction/news-directv-clockhis.html (stopping the clock to, among other things, accommodate the response time to a supplemental FCC data request); Letter to Walter Sonnenfeldt, Counsel for ORBCOMM LLC and ORBCOMM License Corp., from George Li, FCC, dated Feb. 20, 2002, and http://www.fcc.gov/transaction/orbcomm-clockhis.html (stopping the clock to accommodate additional information filed by applicants about their proposed transaction); Letter to William S. Reyner, Jr., Hogan & Hartson, L.L.P., John C. Quale, Skadden, Arps, Slate, Meagher & Flom, L.L.P., and Marvin J. Diamond, Law Offices of Marvin J. Diamond, from Roy Stewart, FCC, File Nos. BALCT-20000918ABB, *et al.*, dated Dec. 21, 2000, and http://www.fcc.gov/transaction/fox-chriscraft-clockhis.html (stopping the clock to accommodate the time it would take applicants to respond to an FCC data request); Letter to Arthur H. Harding, Fleischman and Walsh, LLP, and Peter D. Ross, Wiley Rein & Fielding, from To-Quyen Truong, FCC, CS Docket No. 00-30, dated June 9, 2000, and http://www.fcc.gov/transaction/aol-tw-clockhis.html (same); Letter to William S. Reyner, Jr., Hogan & Hartson, L.L.P., John C. Quale, Skadden, Arps, Slate, Meagher & Flom, L.L.P., and Marvin J. Diamond, Law Offices of Marvin J. Diamond, from Roy Stewart, FCC, File Nos. BALCT-20000918ABB, *et al.*, dated April 3, 2001, and http://www.fcc.gov/transaction/fox-chriscraft-clockhis.html (same).

[6]/ Letter to Chairman Kevin Martin, FCC, from Christopher J. Wright, Counsel for Savvis Communications, Inc., and Brad E. Mutschelknaus, Counsel for Cbeyond Communications, Eschelon Telecom, TDS Metrocom and

Mechanical application of the 180-day clock is particularly inappropriate in these unique circumstances. The size and scale of these proposed mergers is unprecedented and will potentially impact the communications services available to almost all Americans. The two transactions intersect in time and effect. The two largest RBOCs are proposing to purchase their two largest competitors – to the mutual benefit of each other. If these mergers are allowed to proceed without divestitures and significant conditions, the resulting post-merger companies together would control an astonishing 80% of the nation's wireline business market, more than 63% of all ILEC lines, and more than half of all wireless subscribers nationwide. [7]/ These levels of concentration have not been seen since Divestiture, and their implications must be investigated thoroughly if the Commission is to fulfill its mandate under the Communications Act to ensure that these mergers "enhance [and] not retard competition." [8]/

It is against this backdrop that Commission staff appropriately sought vital additional information from the Merger Parties. But rather than concede that the volume of new information they submitted in the record merits additional time for review, the Merger Parties are choosing to promote the fiction that their submissions are nothing more than "business as usual" in merger review proceedings, and that all interested parties are being afforded the access they need to these materials. Nothing could be further from the truth. Moreover, these productions occurred following the comment and reply comment cycles, during which interested parties were left to infer, extrapolate and guess about the facts, all of which the Merger Parties had in their possession from the outset.

The Merger Parties have debated whether their initial merger applications were complete when filed. [9]/ That is not the point, and the Commission does not need to address that issue here. The Commission is engaged in meeting its statutory obligation to determine whether the respective mergers "enhance competition." To that end, the Commission staff has required the Merger Parties to provide vital and highly relevant information in the record of these dockets. Now the Commission and interested parties need time to review, analyze, and address this vital information.

This would be a challenging task even if the Merger Parties had provided the information in an unrestricted format. Again, the sheer volume of the productions involve over a million pages. In these circumstances, it is clear that the 180-day clock applicable to a more typical transaction requires adjustment here. As the Commission is well aware, basic administrative

---

XO Communications, WC Docket Nos. 05-65 and 05-75, dated May 25, 2005. *See also* Comments of WilTel Communications LLC, WC Docket No. 05-65, filed Apr. 25, 2005 (noting that interested parties are awaiting SBC/AT&T's response to the Commission's data request and noting that its ability to participate in this proceeding is limited by the lack of data in the record).

[7]/ *See FCC Statistics of Communications Common Carriers, 2003/2004 Edition,* released Oct. 12, 2004, Table 2.1 (Total Access Lines); UBS Wireline Telecom Play Book, January 14, 2004, and company SEC filings; Deutsche Bank Data Book, Volume 8, March 2005 at 2.

[8]/ *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, *Memorandum Opinion and Order*, 12 FCC Rcd 19985, 20007 (¶ 36) (rel. Aug. 14, 1997).

[9]/ *See, e.g.*, Verizon/MCI Letter at 2.

procedure requires that the Commission provide itself and interested third parties with a reasonable opportunity to review the data in the record.

The problems with the recent document productions by the Merger Parties only underscore why more time is needed here. Qwest has made – and continues to make – serious efforts to access, review and analyze the overwhelming volume of materials. We have, for example, made multiple visits to the SBC and AT&T data rooms to begin the arduous task of reviewing their responses to the Commission's data requests. In that regard, we take offense at the suggestion of those two parties that the limited use of their data rooms is a reflection of the level of energy interested parties have invested – and continue to invest – in assessing the merits of their proposed merger. [10]/ This claim turns the facts on their head. Qwest promptly evaluated the production, and promptly identified the fact that SBC and AT&T made their production in a manner that makes it virtually impossible to conduct a reasonable analysis. Qwest nevertheless has devoted significant hours to working with the production, but, after doing so, its conclusion has not changed. SBC and AT&T are being disingenuous when they criticize third parties for not wasting time in data rooms built to frustrate actual use.

Perhaps the most frustrating aspect of SBC/AT&T's production is that they have indiscriminately designated virtually each of the hundreds of thousands of pages they have produced as "copying prohibited." As we indicated in our letter to you of May 25, 2005, this means that parties who have signed the Protective Orders cannot view these documents – many of which are complex spreadsheets containing thousands of data points – electronically in their own offices. It also means that they cannot organize and view the data electronically and must instead rely on printed pages, which in spreadsheet format are virtually useless.

SBC/AT&T also are applying the terms of the *Second Protective Order* far more broadly than the Commission intended, which has the effect of preventing Qwest's outside attorneys from sharing relevant information in these documents with Qwest's in-house representatives, who are not involved with making business decisions but nevertheless are experts in their fields and thus best-suited to assess these materials.

Qwest does not object to the limited application of a "copy prohibited" designation. We also understand that certain information is sufficiently sensitive that it should be restricted from internal company personnel. But the problem here is that SBC and AT&T have grossly abused their rights under the Protective Orders, making it impossible for the public to participate in these proceedings.

Although we could do so, we do not believe it would be productive to engage here in a further "tit-for-tat" by pointing out all the ways SBC/AT&T have mischaracterized the situation. [11]/ In an effort to spare Commission staff the task of mediating this issue, we are trying to work directly with SBC/AT&T to resolve our concerns by asking SBC/AT&T to

---

[10]/ SBC/AT&T Letter at 1-2.

[11]/ We also are refraining from discussing at length how SBC/AT&T are thwarting the discovery efforts of interested parties in state proceedings, particularly in California, where, for example, Qwest had to file a Motion to Compel to obtain even the most basic information from SBC/AT&T, such as copies of SBC/AT&T's responses to data requests served by other parties.

commit to providing us with copies of the documents we thus far have identified as most critical to our review under terms – and in formats – that are conducive to performing a meaningful analysis. Today we sent a letter to SBC/AT&T's attorneys in connection with this request and have attached here a copy for your information.

We also have begun coordinating with Verizon and MCI to determine whether we will encounter the same issues that have arisen with SBC and AT&T. Verizon/MCI's responses to the FCC's data requests were filed only recently on May 26, 2005. Because SBC/AT&T made their documents available first, Qwest's efforts necessarily focused on them first. We expect, however, that issues will arise with the Verizon and MCI productions, particularly because we already have been told by those parties that a substantial portion of the hundreds of thousands of pages they produced have been designated as subject to the *Second Protective Order*. This means that, contrary to the purpose of that *Order*, Qwest in-house personnel will not be able to review any of them even though they are not involved in any business decision-making.

We also have been told by MCI that it will not agree to make *any* of its documents available to us electronically – even those not subject to "copying prohibited" status and even though we understand that MCI has provided electronic copies of at least some of these documents to FCC staff. We are in the process of determining the extent to which MCI is discriminating between interested parties and staff in terms of how it is willing to make its documents available. In the meantime, it is worth noting that MCI's own data room makes these documents available only on computer in ".pdf" format, which is not surprising given that the task of merely coordinating – to say nothing of reviewing and commenting on – hundreds of thousands of pieces of paper is monumental. The availability of these ".pdf" versions, however, prevents interested parties such as Qwest from reviewing Excel-created spreadsheets and similar documents in their original format and thus in a searchable and manipulatable manner. MCI will not even make these ".pdf" versions (the non-"copying prohibited" ones, to which we have a right under the Protective Orders) available to us electronically, which, though far from ideal, at least would enable us to obtain and review MCI's materials in a faster, more cost-effective manner. We have asked MCI to reconsider this decision and are awaiting its response. In the meantime, Verizon has informed us that it will look into making its non-"copying prohibited" documents available to us electronically in ".pdf" format. We are hopeful that this will be the case, although, again, the ".pdf" format is far from ideal and presents its own issues, which we would have to work out with Verizon. Given the existence of not one, but *two* Protective Orders in this proceeding and a "copying prohibited" option, we cannot conceive of a rationale for not acceding to our simple requests for electronic versions of non-"copying prohibited" documents.

We cannot think of another proceeding in which the need for additional time to conduct review and comment on record evidence has been so critical. The sheer volume of data that must be reviewed – together with the extraordinary implications these two mergers will have on the industry and the country – demand that additional time be afforded to conduct a thorough, meaningful and fair review.

In this regard, SBC/AT&T indicate that they have produced documents in their data room in the same manner that they have done for the FCC staff. [12]/ If this is correct, it further

---

[12]/ SBC/AT&T Letter at 4-5.

underscores the problem here. The Commission staff itself will require time to actually review and analyze this important information with care. (Indeed, it is not even clear whether the productions made by the Merger Parties are fully responsive to the Commission's data responses in the first place. It will take time for the staff to sort through the documents and make even that preliminary determination.) To the extent the staff, like the public, has not been given data in a form that it can work with electronically, it will be severely disadvantaged as well. There is no way that the staff can do its job under these constraints. Conversely, if the staff has record data in electronic form, interested parties who have signed the Protective Orders should have similar access.

As previously noted, it is not extraordinary for the Commission to stop its administrative clock to ensure that it has time to fulfill its statutory review obligations. [13]/ The Commission has routinely stopped the clock for a wide range of reasons and under similar circumstances in other merger proceedings. [14]/ Perhaps most relevant here is the Commission's actions in the Comcast/AT&T merger, in which the Commission stopped the clock after receiving "hundreds of pages of material" from the applicants late in the 180-day period. [15]/ The Commission correctly noted at the time that "[a]lthough the agency seeks to meet the 180-day benchmark, *its statutory obligation to determine that an assignment or transfer serves the public interest takes precedence over the informal timeline.*" [16]/ Here, the Merger Parties have filed not merely "hundreds of pages," but collectively *over a million pages* of new material. It stands to reason that the Commission should stop the clock so Commission staff and interested parties have a sufficient opportunity to review, digest and comment on these new materials before the mergers move forward. [17]/ Appropriate consideration of the issues requires no less.

Qwest is confident that the Commission is committed to a full and careful review of all of the complicated and vital issues presented by these transactions. The Merger Parties know full well that their private interests are best served if that review is constrained by a mechanistic application of the 180-day clock. The Commission should make clear that it will do its job by taking these transactions off the clock pending full review, based in part on reasonable access, of

---

[13]/ *See supra,* note 5. The time period during which the clock was stopped on these occasions varied based on the circumstances. We are not aware of any case in which the parties supplemented their filings with over a million pages of new material. This suggests that any precedent in this area sets only a minimum for how long the clock may need to be stopped to accommodate a meaningful review of the new data submitted here by the Merger Parties.

[14]/ *Id.*

[15]/ *See* Letter to James R. Coltharp, Comcast Corporation, and Betsy J. Brady, AT&T, from W. Kenneth Ferree, FCC, MB Docket No. 02-70, dated September 24, 2002.

[16]/ *Id.* at 2.

[17]/ The Commission's own website supports this notion by acknowledging that a common reason for stopping the clock includes "receiv[ing] significant new information about an application." *See* www.fcc.gov/transaction/timeline.html. The website acknowledges further that "[o]n rare occasions the clock may be reset to a prior date" – meaning, the clock is not simply restarted at the point at which it was stopped but also is set back in time. *See id.* We cannot think of a pair of transactions and a set of circumstances in which it would be more appropriate to stop the clock and reset it anew than the proposed mergers of SBC/AT&T and Verizon/MCI. Given the volume of new data filed in the record and the importance of these merger reviews to the nation, stopping and resetting the clock anew is appropriate here.

the extensive data that the Commission itself has made clear is relevant to these interrelated matters.

We thank you again for your consideration of our concerns.

Respectfully submitted,

Gary Lytle
Senior Vice President – Federal Relations
Qwest

Copy (via email):
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Daniel Gonzalez
Michelle Carey
Lauren Belvin
Jessica Rosenworcel
Scott Bergmann
Thomas Navin
James Bird
Gail Cohen
Kathleen Collins
William Dever
Charles Iseman
David Krech
Jonathan Levy
Joann Lucanik
Marcus Maher
Erin McGrath
Gary Remondino
Mary Schultz
Jeff Tobias
Gary L. Phillips (SBC)
Lawrence J. Lafaro (AT&T)
Michael E. Glover (Verizon)
Richard S. Whitt (MCI)

HOGAN & HARTSON
L.L.P.

DAVID L. SIERADZKI
PARTNER
(202) 637-6462
DLSIERADZKI@HHLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

June 7, 2005

BY ELECTRONIC DELIVERY

Peter J. Schildkraut
Arnold & Porter LLP
555 12th Street, N.W.
Washington, DC 20004

David L. Lawson
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, DC 20005

Re: WC Docket No. 05-65 – SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer of Control

Dear Mr. Schildkraut and Mr. Lawson:

Qwest Communications International Inc. ("Qwest") is writing to discuss the serious failure of your respective clients to comply fully and in good faith with the FCC's requirements concerning the production of information in the above-referenced proceedings. SBC and AT&T have violated both the letter and the spirit of the *First Protective Order* and *Second Protective Order* (together, the "*Protective Orders*").

We are hopeful that we can address these matters directly with your clients, without burdening the FCC and its staff. In this letter we discuss the general -- and fundamental -- deficiencies in your production. We then make specific requests for immediate access to basic data needed to evaluate the public interest arguments that SBC and AT&T have presented in support of their merger. We are available to discuss these matters with you immediately, and in any event ask that you respond to our request within two days.

First of all, as a general matter we strongly object to the mischaracterization of your document production in SBC/AT&T's letter to the FCC of May 27, 2005. That letter is rife with misleading statements. At a relatively minor level, SBC suggests that the parties have made physical access to the documents easily available from the outset. To the contrary, the

initial ground rules provided for access only during limited time slots and provided only a single copy of the most important documents for review. SBC and AT&T relaxed these restrictions after they received complaints from Qwest and other parties.

More significantly, SBC suggests that parties have not been interested in viewing the document production, citing periods when the document rooms have been vacant. In fact, for Qwest, it has been just the opposite. Once Qwest obtained initial access to the boxes of documents, it immediately became apparent that its ability actually to review and use the documents was unnecessarily burdened by the manner in which they are presented, including the absence of any reasonable index, the lack of access to data in quantitative spreadsheets in electronic form, and the unjustified designation of every confidential document as "copying prohibited." Third parties should not be criticized for declining to engage in a hugely expensive and wasteful process created by SBC and AT&T in a patent attempt to discourage and ultimately prevent any such meaningful review.

Qwest representatives nevertheless have made a serious effort to evaluate the scope and nature of the SBC and AT&T production. We have devoted dozens of person-hours on an initial review of the documents at all three of the SBC/AT&T outside counsel locations, and this exercise has underscored the fact that it is not practical to deal with that production given the improper and unnecessary obstacles that the parties have imposed to meaningful review. SBC has responded in part by stating that it is providing documents in the same format as it has done for the FCC staff. But if that is so, it is a further indictment of the process. It means that the staff similarly cannot use the data itself in a practical and timely manner to conduct meaningful analysis.

In that regard, Qwest is particularly concerned about actions your clients have taken, in violation of the Commission's *Protective Orders*, to interfere with even the most basic ability of third parties to review and analyze the confidential documents produced in this proceeding. This problem is most acute with regard to actions by SBC and AT&T to mark as "copying protected" nearly every document produced in response to the FCC's April 18, 2005 data requests.

These actions go far beyond the already stringent restrictions contained in the FCC Protective Orders. As you know, the *First Protective Order* provides substantial protection for SBC's and AT&T's confidential documents: it prohibits disclosure of the data and prohibits use of them for any purpose other than in connection with the FCC proceeding. The *Second Protective Order* provides even greater protection: it requires that only outside counsel, consultants, and experts representing opposing parties may review the documents, and prohibits sharing the documents or data with the opposing parties' employees. This handicaps us because Qwest personnel are often in a better position to understand the implications of a certain data point or piece of information. However, the *Second Protective Order* (¶ 3) specifies strict limits

on the application of this designation to "those materials which, if released to competitors, will allow those competitors to gain a significant advantage in the marketplace" – *i.e.*, "a company's list of specific customers, customer data aggregated to a relatively detailed level (*e.g.*, zip code, county or MSA), and specific future business, build out or marketing plans." The Commission made it clear that the *Second Protective Order* "does not cover responses to written interrogatories;" that only very limited categories of data submissions would qualify for *Second Protective Order* treatment; and that advance authorization from the Bureau would be required before any further data submissions could be included in this category. *Second Protective Order*, ¶ 4.

SBC and AT&T, however, appear to have flouted these directives, and instead have designated the vast majority of confidential documents submitted in the above-referenced proceeding – including portions of the narrative responses to written interrogatories – as subject to the *Second Protective Order* rather than the *First Protective Order*. In many cases this designation appears to have been applied indiscriminately, without regard to whether the data in question is deserving of such protection. For instance, based on our review of a (necessarily) limited selection of the confidential materials made available in your offices, it appears that many of the documents designated as subject to the *Second Protective Order* are widely-available reports issued by industry analysts and other third parties.

Of even greater concern, your clients have imposed particularly egregious barriers to meaningful review by indiscriminately designating all – 100% – of their confidential documents under both the *First* and *Second Protective Orders* as subject to the "copying prohibited" restriction. By contrast, Verizon and MCI stated, in their June 2, 2005 *ex parte* letter, that they designated only 12% and 30%, respectively, of their documents as "copying prohibited" under the terms of virtually identical protective orders in their merger proceeding. Qwest is not yet prepared to comment on the Verizon/MCI production. We cite these figures simply to underscore the failure of your clients even to try to make the judgments required by the Protective Orders to distinguish the narrow category of documents that are subject to the most limited use.

Your indiscriminate application of the "copying prohibited" restriction, requiring the documents to be reviewed in your offices and not copied, is unnecessary and abusive. It is difficult in all cases, and in many cases virtually impossible, to review, analyze, and work with data found in "copying prohibited" documents.

For example, SBC and AT&T produced hundreds of pages of spreadsheets, containing thousands of data points, in response to several of the subparts in Specifications 3, 4, 5, and 6 of the FCC's April 18, 2005 data request. It is impossible for Qwest to review, analyze, or utilize this information on paper. In addition, without the ability to download electronic copies of these spreadsheets, Qwest's outside counsel, consultants and experts will not be able to

run the data in any independent analyses. Thus, we are completely precluded from using these data to analyze the key public interest issues in this proceeding. Your practice violates the Commission's directive to "give appropriate access to the public" so as to "protect the right of the public to participate in this proceeding in a meaningful way." *Second Protective Order*, ¶ 3.

SBC's and AT&T's designation of all their confidential documents as "copying prohibited" ignores the already substantial protections provided by the confidentiality limitations of the *First* and *Second Protective Orders*. In essence, your practice indicates an expectation that opposing parties and their counsel will violate the *Protective Orders* and misuse the information. This expectation is blatantly improper and cannot be sustained.

We are hopeful that your clients will voluntarily cease engaging in these abusive practices without obliging us to formally ask the Commission to order them to do so. Specifically, your clients must eliminate the "copying protected" restriction on the vast majority of these documents and must reclassify many of the documents from *Second Protective Order* status to either the *First Protective Order* or non-confidential status. In recent telephone conversations, Mr. Schildkraut indicated that your clients would be willing to consider providing copies of certain documents in response to our specific requests. While we do not believe such a process is appropriate or consistent with the spirit of the *Protective Orders*, in a spirit of cooperation we are willing to make specific requests of material that is particularly critical to any meaningful public interest analysis.

Qwest therefore respectfully requests that you provide us with such paper and electronic copies of the unredacted versions of each of the following documents within two business days of the date of this letter, as required under the terms of the *Protective Orders*:

- SBC's and AT&T's letters, respectively dated March 25 and March 24, 2005, describing the companies' organizational structure and listing individual officers and employees and their titles and functions;

- SBC's and AT&T's respective narrative responses to the FCC's April 18, 2005 data requests, both filed on May 9, 2005, and the updates thereto filed May 12 and May 20 (as well as any other updates);

- The exhibits and attachments to the SBC and AT&T narrative responses to the FCC's April 18, 2005 data requests relating to Specifications 1-6, 14-18, and 21-24, including all sub-parts of those Specifications (except 3(e)).

- The "highly confidential" SBC Disconnect Study submitted with SBC/AT&T's reply comments.

We note that the foregoing list is just a start, based on what we have been able to review so far. Qwest reserves the right to request copies of additional documents as well.

To the extent any of these materials originally were produced in Excel or other spreadsheet software, we request electronic copies in the original software format (*not* converted to PDF). The electronic copies should include all formulas embedded in the original documents, and should not include security codes or other impediments to full use of the data to conduct our own analysis subject to the restrictions of the Protective Orders.

In addition, we intend to request copies of certain specific documents included with SBC's and AT&T's respective May 9 data submissions. However, neither SBC nor AT&T has made available a reasonably detailed, coherent index, even on a "copy prohibited" basis, of the documents included in SBC's 169 boxes or AT&T's 27 boxes. It would be extraordinarily burdensome to require us to review the contents of all 196 boxes prior to requesting copies of specific items. Qwest knows because it has examined boxes on a selective basis, and determined how unnecessarily difficult they are to work with. Qwest believes that the parties have created indexes for themselves of what is contained in these boxes. Production of such an index would simplify review by Commission staff and third parties. Accordingly, Qwest respectfully requests that both SBC and AT&T provide detailed indexes of all materials submitted in response to the FCC's April 18 data request within one week (7 calendar days) of the date of this letter. These indexes should indicate, for each discrete document:

- The box number and Bates number page range of the document;
- The title of the document;
- The person or persons (and organizations) that originated the document, and to whom the document was addressed;
- The date of the document;
- The number of the FCC Specification(s) to which the document is responsive; and
- To the extent you claim the document falls within the scope of the *Second Protective Order* or should be "copy prohibited," an explanation of the basis for that claim.

Based on the information provided in this index, we intend to follow up with requests for copies of additional specific documents and data that SBC and AT&T have produced.

As noted above, and consistent with our discussions, Qwest would prefer to resolve this matter directly with SBC and AT&T. But rest assured that Qwest will not hesitate to exercise its right, pursuant to the terms of both *Protective Orders*, to pursue this matter further with the FCC staff should your clients continue to refuse to provide us with meaningful access to the documents, or should you not respond affirmatively to this letter within two business days.

We look forward to hearing from you. Please feel free to contact me if you have any questions concerning this letter.

Respectfully submitted,

David L. Sieradzki
Counsel for Qwest Communications International Inc.